

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney  
Harold Shelton

C-1-02-479  
5/7/2004

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

JEFFERSON-PILOT INSURANCE COMPANY, )  
)  
Plaintiff, )  
)  
vs. ) CASE NO.  
) C-1-02-479  
CHRISTOPHER L. KEARNEY, ) (Judge Spiegel)  
)  
Defendant. )

COPY

The deposition upon oral examination of HAROLD  
SHELTON, being taken pursuant to Order and in accordance  
with the Federal Rules of Civil Procedure before Rebecca J.  
Huddy, Notary Public, at the Marriott, 304 North Greene  
Street, Greensboro, North Carolina, on the 7th day of May,  
2004, beginning at 12:20 p.m.

Reported By: Rebecca J. Huddy

Huseby, Inc. An Affiliate of Spherion, 1230 W. Morehead St., Suite 408, Charlotte, NC 28208 (704) 333-9889

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## APPEARANCES:

For the Plaintiff: Mr. William R. Ellis  
Wood & Lamping, LLP  
600 Vine Street, Suite 2500  
Cincinnati, Ohio 45202

Ms. Stephanie Farabow  
Jefferson-Pilot Life Insurance Company  
100 North Greene Street  
Greensboro, North Carolina 27401

For the Defendant: Mr. Michael A. Roberts  
Graydon, Head & Ritchey  
511 Walnut Street  
1900 Fifth Third Center  
Cincinnati, Ohio 45202

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1 A. No.  
2 Q. Okay. Did you just retire from Jefferson-Pilot and  
3 take on other employment or do you --  
4 A. No, I just retired, yes.  
5 Q. Okay. So from your retirement date through at least  
6 two weeks ago, you didn't have any discussion in any  
7 way about Mr. Kearney?  
8 A. No.  
9 Q. Prior to your retirement date, did you ever discuss  
10 with anyone the thought that Jefferson-Pilot had  
11 mistakenly paid Mr. Kearney benefits?  
12 A. Not that I recall.  
13 Q. Okay. Two days ago or within the past week Mr.  
14 Roberson called you and shared that with you, correct?  
15 A. No.  
16 Q. He testified this morning that you and he spoke within  
17 the past two days and you discussed the subject that  
18 Mr. Kearney, according to Jefferson-Pilot or somebody  
19 else they employ, made a mistake for eight or nine  
20 years?  
21 A. Well, we had missed -- we were in a meeting several  
22 days ago, but he did not call me.  
23 Q. Very well. Who was at the meeting?  
24 A. I believe it was he, myself, Mr. Ellis, and  
25 Ms. Farabow.

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1 The witness, HAROLD SHELTON, being first duly  
2 sworn, was examined and testified as follows:  
3  
4 EXAMINATION (by Mr. Roberts):  
5  
6 Q. Mr. Shelton, my name is Mike Roberts. I'm a  
7 defendant's lawyer. I represent the defendant in this  
8 lawsuit, Mr. Chris Kearney. He's been sued by  
9 Jefferson-Pilot and we're here to find out why.  
10 Did you work on Mr. Kearney's claim?  
11 A. I think at some point during those years that I was  
12 involved in it at some point, but -- you know, just  
13 sort of in and out depending on what the circumstances  
14 were and if Mr. Roberson was not available or if I was  
15 needed in that case. The answer is yes.  
16 Q. Okay. Prior to two weeks ago -- let's forget about  
17 two weeks ago till today -- when was the last time you  
18 spoke to anyone about the Chris Kearney claim?  
19 A. I really don't know.  
20 Q. Okay.  
21 A. Over five years, I would think, since I retired.  
22 Q. When did you retire?  
23 A. December 31, 1999.  
24 Q. I hope you didn't wear a tie and tie clip today,  
25 because Mr. Ellis and I did not.

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1 Q. Stephanie? When did the meeting take place?  
2 A. I believe it was Wednesday.  
3 Q. Where did it take place?  
4 A. At Jefferson-Pilot.  
5 Q. Okay. And was Mr. Ellis conducting the meeting?  
6 A. Yes.  
7 Q. And he's the one that informed you that the mistake  
8 had been made?  
9 A. Yes.  
10 Q. Very well. Was that news to you?  
11 A. Yes.  
12 Q. How long did you work at Jefferson-Pilot?  
13 A. I was with Pilot Life, which was a subsidiary at the  
14 time, from 1960, December 1960 to 1990, at which time  
15 the two companies combined and I came here -- came to  
16 Jefferson-Pilot downtown and I worked for the two for  
17 a total of 38 years.  
18 Q. I bet you didn't work just in disability insurance  
19 claims that whole time.  
20 A. I was started in the Group Division in 1960, worked  
21 there for --  
22 Q. Pre-ERISA?  
23 A. Yes -- for about 20 years, and then I transferred to  
24 the Individual Health Division.  
25 Q. Okay. And when you were doing the pre-ERISA and

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1 post-ERISA group claims, were those disability claims  
2 included in --  
3 A. Yes, to some extent, but primarily health insurance.  
4 Q. Okay. And in 1980 or thereabouts when you switched  
5 over to individual, did your focus on disability  
6 insurance claim administration increase?  
7 A. Yes, even though we also had hospital claims,  
8 accidental death -- I was more or less involved in all  
9 of that, hospital and disability.  
10 Q. Did you feel comfortable and competent in reviewing  
11 disability insurance policies to ascertain their  
12 meaning?  
13 A. Yes, I think so.  
14 Q. Throughout your 38-year career?  
15 A. Yes.  
16 Q. What was the position you held prior to the merger of  
17 Pilot and Jefferson?  
18 A. I was supervisor of Claims, Group Claims, then  
19 became -- I was Assistant Vice President and then when  
20 we combined the two, I was manager of policy service  
21 and claims in the Individual Health Division, and then  
22 when we came downtown, they changed the focus and I  
23 became a manager in lieu of Assistant Vice President.  
24 The title was changed only.  
25 Q. Manager of the individual?

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1 A. Health, yes.  
2 Q. So throughout the '90s you were doing -- overseeing  
3 claim analysts in the disability insurance claim  
4 field?  
5 A. And hospital, yes.  
6 Q. And hospital. Were there a lot of mistakes being made  
7 because the department was overloaded?  
8 A. I felt with the volume of work that was there, our  
9 folks did a great job. I think, you know, we were  
10 constantly concerned about the welfare of the insured.  
11 Whatever this may appear, our major concern was that  
12 we get the folks their benefits, that we pay the  
13 claims according to the contracts, and that was our  
14 primary focus. I do feel that we had -- the reason I  
15 got involved in the claim and JL got involved in the  
16 claim was because of the staffing, we just needed all  
17 the help we could get in those situations.  
18 Q. Are you talking about Mr. Roberson when you refer to  
19 JL?  
20 A. Yes, JL Roberson.  
21 Q. Within the past -- well, at your meeting with  
22 Mr. Ellis when he conducted and shared with you the  
23 revelation that you had made a mistake, did he give  
24 you the opportunity to look at the policy?  
25 A. We did briefly review the policy and provisions of the

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1 contract.  
2 Q. Sections that he pointed out to you or did you spend  
3 time independently reading the whole policy on your  
4 own?  
5 A. Just reading through -- there were some areas pointed  
6 out, but just reading through, just reviewing them,  
7 because it's been a long time.  
8 Q. I hope to forget everything about my career when I  
9 retire.  
10 A. Well, I try to, even though I enjoyed my 38 years with  
11 the company, very fulfilling.  
12 Q. I enjoy some of mine. Some things I don't enjoy.  
13 Did Mr. Ellis allow you to sit down by  
14 yourself with the policy and review it cover to cover?  
15 A. Not particularly that I recall.  
16 Q. Okay. But you know what policy we're talking about,  
17 you know, some fancy nomenclature, WJ576A or something  
18 like that, right?  
19 A. Yes.  
20 Q. Was that version of policy one that your department in  
21 the '90s had sufficient experience with? I mean, it  
22 wasn't just Mr. Kearney's claim?  
23 A. Yes.  
24 Q. And the residual disability rider and the Social  
25 Security Supplement rider and the increase in

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1 additional benefits rider, were those also provisions  
2 that Jefferson-Pilot sold that you had a comfort level  
3 with through the '90s?  
4 A. Yes, I think so. The residual was one that did not  
5 come up very often. It was the one that -- most  
6 people were totally disabled and not able to go back  
7 to work.  
8 Q. Okay. When a residual situation arose, did that  
9 require that you concentrate a little more closely on  
10 the actual policy rights?  
11 A. I think so.  
12 Q. Okay. Mr. Shelton, have you ever met Mr. Kearney  
13 before?  
14 A. No, I have not. When he came out, he introduced  
15 himself when I was outside, yes. That's the first  
16 time I'd met him.  
17 Q. You and he have spoken on the phone many times --  
18 A. Yes.  
19 Q. -- over the course of several years?  
20 A. Yes.  
21 Q. And you have corresponded with him?  
22 A. Yes.  
23 Q. Okay. Do you recall the period of time when  
24 Jefferson-Pilot sought some assistance with Mr.  
25 Kearney's claim from a company called DMS?

3 (Pages 6 to 9)

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1 on receipt?  
 2 A. That's possible, yes.  
 3 Q. At the third paragraph of that January 13 letter from  
 4 Mr. Kearney, the last three sentences say --  
 5 A. I'm sorry, what was that -- which one is this?  
 6 Q. You're on the right page right now, the third  
 7 paragraph.  
 8 A. Okay.  
 9 Q. January 13 letter from Mr. Kearney. The last three  
 10 sentences say, "Enclosed is a line card listing  
 11 principals (blacked out) from '95. Jefferson-Pilot  
 12 may put me in an unfavorable position with those  
 13 principals if you contact them. I have only two left  
 14 and the office in Toledo is closed."  
 15 Was that the first time that Mr. Kearney had  
 16 expressed that concern, as far as you know?  
 17 A. No, I do not know.  
 18 Q. Turn to the letter dated January 19, '98, Bates 2990.  
 19 A. Okay.  
 20 Q. It's a letter from Mr. Kearney a week after you had  
 21 that conference where you did a -- do you see your  
 22 memo about your January 13 discussion with him?  
 23 A. (No response)  
 24 Q. Sir?  
 25 A. I'm sorry?

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1 Q. Do you see the memo -- as we go through the  
 2 chronology, there was a January 13 memo from you to  
 3 the file concerning a call you had with Mr. Kearney.  
 4 A. Yes, here. This is 2992.  
 5 Q. That's your memo, and then his letter, his two-page  
 6 letter also references that lengthy call you had on  
 7 the 13th, right?  
 8 A. Yes.  
 9 Q. I guess the fax to Ditmar could have been either your  
 10 memo or Chris's letter, since they're both two pages?  
 11 A. Yeah.  
 12 Q. Both relate to January --  
 13 A. I'm not sure what was forwarded.  
 14 Q. Okay. And then a week later or on January 19, Mr.  
 15 Kearney sends you a letter memorializing -- I'm  
 16 talking about 2990 now -- "When we talked last week,  
 17 you told me that residual disability benefits were  
 18 subject to the same terms that are listed in the total  
 19 disability section." Did you tell him that?  
 20 A. Not unless it was in my -- this memo to file.  
 21 Q. If it's not in your two-page -- how long was the phone  
 22 call?  
 23 A. I can't say, must have been 10 to 15 minutes anyway.  
 24 Q. Is there things you talked about that aren't -- were  
 25 there words transferred between the two of you that

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1 aren't captured in your memo?  
 2 A. I can't say. I would try to include everything in the  
 3 memo.  
 4 Q. Okay. But it's his memory within a week of the call  
 5 that you told him that residual disability benefits  
 6 were subject to the same terms that are listed in the  
 7 total disability section. Are you saying that that  
 8 never happened, you never said that to him?  
 9 A. I can't -- no, I am not saying that, because I don't  
 10 know.  
 11 Q. Okay. Earlier we saw a '93 question, 1993 question by  
 12 Mr. Kearney about whether or not waiver of premium  
 13 applies to him under residual disability and he raises  
 14 the issue again here in 1998, right?  
 15 A. Yes, he does, in the second paragraph, January 19, '98  
 16 letter.  
 17 Q. Your responsive letter on the next page, 2982, dated  
 18 January 28, '98, the second paragraph, in response to  
 19 his question about whether or not waiver of premium  
 20 applies, you say, the middle of the second paragraph,  
 21 "In reviewing the waiver of premium provision, it  
 22 appears that is applicable only if benefits are being  
 23 paid under the total disability provision of the  
 24 policy."  
 25 You would agree with me that that is not

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1 necessarily an equivocal explicit statement that you  
 2 know that they don't apply. You're suggesting that it  
 3 appears to you, correct?  
 4 A. I used the word "appears."  
 5 Q. Okay.  
 6 A. It also states premiums would continue to be due,  
 7 so --  
 8 Q. Because it's your assumption that it appears that that  
 9 is the case?  
 10 A. Yes.  
 11 Q. Okay. And you apologized to him for any misleading  
 12 statement that may have been made in the January 13  
 13 phone call, right?  
 14 A. Yes.  
 15 Q. What day of the month were benefits payable to Mr.  
 16 Kearney?  
 17 A. Not any specific day. We didn't have a specific day  
 18 that we paid benefits. When the claim form came in,  
 19 it was matched with the file and if everything is in  
 20 order, it was paid at that time. He may have been  
 21 paid generally in the same time of the month, but  
 22 could have been different days, say, early in the  
 23 month or -- but primarily it's when the claim form was  
 24 received that we would start the process.  
 25 Q. How long does the process take? Would it be the same

13 (Pages 46 to 49)

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<p style="text-align: right;">Page 58</p> <p>1 Q. Mississippi?</p> <p>2 A. Yes.</p> <p>3 Q. Did you testify at trial in that case?</p> <p>4 A. No.</p> <p>5 Q. You settled on the eve of trial?</p> <p>6 A. (Witness nods head)</p> <p>7 Q. Was DMS involved in that matter, too?</p> <p>8 A. I do not recall that they were.</p> <p>9 Q. Have you ever given any depositions relating to your</p> <p>10 work at Jefferson-Pilot that also related to DMS's</p> <p>11 involvement?</p> <p>12 A. Well, I think the King case was one that they had --</p> <p>13 they were processing at the time, DMS.</p> <p>14 Q. That's correct. Your memory is correct. Any other</p> <p>15 cases?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Did you review with Mr. Ellis over the past couple</p> <p>18 days the disability claim worksheet in Mr. Kearney's</p> <p>19 file?</p> <p>20 A. I believe I just glanced at it.</p> <p>21 Q. Okay. Do you know if your initials appear as</p> <p>22 approving payment?</p> <p>23 A. Not very often, but I think there was --</p> <p>24 Q. There was some?</p> <p>25 A. -- some. It would be HS.</p>	<p style="text-align: right;">Page 60</p> <p>1 what we should be paying and that we were getting all</p> <p>2 the information we needed to properly consider the</p> <p>3 claim. That would have been our objective.</p> <p>4 Q. So there wasn't any one- or two-hour conference calls</p> <p>5 to educate DMS on --</p> <p>6 A. No.</p> <p>7 Q. Was Phyllis Harden good at her job?</p> <p>8 A. Yes.</p> <p>9 Q. How about Mr. Maxwell?</p> <p>10 A. Yes.</p> <p>11 Q. We decided not to take his deposition today, by the</p> <p>12 way.</p> <p>13 A. Good, I'm glad. His health is not all that good.</p> <p>14 Q. I asked before I requested. He said it wouldn't be an</p> <p>15 imposition.</p> <p>16 A. He did say?</p> <p>17 Q. His wife said it wouldn't and then she went and</p> <p>18 confirmed it with him and that's what she told me.</p> <p>19 A. Yeah, yeah.</p> <p>20 Q. So maybe he's doing better.</p> <p>21 A. I'm sure he's willing to cooperate.</p> <p>22 Q. Thank you. Have you ever testified at trial?</p> <p>23 A. No, I have not.</p> <p>24 Q. Do you want to?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. What's the procedure that the company requests or</p> <p>2 requires before you put your initials on a payment</p> <p>3 authorization?</p> <p>4 A. You would have the claim form in front of you and the</p> <p>5 examiner would look at it. If it's over their limit,</p> <p>6 then we would review the same thing they had reviewed.</p> <p>7 Q. Okay. So in this case Phyllis Harden and/or Bob</p> <p>8 Maxwell would have been the claims examiners because</p> <p>9 Mr. Kearney's claim was above a certain threshold?</p> <p>10 A. Yes.</p> <p>11 Q. Either you or JL would have to sign it as well?</p> <p>12 A. Right, that's correct.</p> <p>13 Q. And what did the company require of you before you put</p> <p>14 your initials down?</p> <p>15 A. That the payment be correct.</p> <p>16 Q. Okay. And did you undertake to make certain of that</p> <p>17 when you --</p> <p>18 A. Yes, I tried very hard to do that.</p> <p>19 Q. Okay. Did you ever have any conversations with DMS of</p> <p>20 length about the substance of Mr. Kearney's claim or</p> <p>21 did you just simply send them the file and leave them</p> <p>22 be?</p> <p>23 A. No, I think primarily we were just trying to get all</p> <p>24 the information, make sure that, you know, he was</p> <p>25 getting the benefits he's entitled and we were paying</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. I might have asked you this earlier. Are you mindful</p> <p>2 that DMS continued to pay the claim in the same manner</p> <p>3 that your company did for at least four years after</p> <p>4 the referral to --</p> <p>5 A. I assume that they have been.</p> <p>6 Q. What I mean in the same manner is, they kept adjusting</p> <p>7 it for COLA every May and they kept paying Social</p> <p>8 Security Supplement until sometime in 2002. Are you</p> <p>9 mindful of that?</p> <p>10 A. No, I was not. I wasn't aware of how they were paying</p> <p>11 the claim.</p> <p>12 Q. After 2000?</p> <p>13 A. Yeah.</p> <p>14 Q. Did you ever seek advice of legal counsel during the</p> <p>15 time that you were at Jefferson-Pilot with regard to</p> <p>16 Mr. Kearney's claim?</p> <p>17 A. Not that I recall. We probably would have had</p> <p>18 something in the file if we had.</p> <p>19 Q. Under what circumstances would you use the general</p> <p>20 counsel office of Jefferson-Pilot?</p> <p>21 A. I think only if there was some legal question about --</p> <p>22 while the claim payment is being made, normally we</p> <p>23 would not have to refer to them. It might just depend</p> <p>24 on whether there's a complication or not.</p> <p>25 Q. Did you ever seek their input when there's confusion</p>

16 (Pages 58 to 61)